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5 **UNITED STATES DISTRICT COURT**
6 **SOUTHERN DISTRICT OF CALIFORNIA**
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8 ERIC WILTON BURTON,

9 Petitioner,

10 vs.

11 DIRECTOR, CALIFORNIA
12 DEPARTMENT OF CORRECTIONS
AND REHABILITATION,

13 Respondent.
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CASE NO. 08CV0325-LAB (POR)

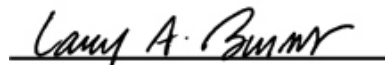
**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

[Dkt No. 6]

15 By Order entered April 18, 2008, this court granted petitioner's application to proceed
16 *in forma pauperis* with his 28 U.S.C. § 2254 habeas petition, but dismissed the petition
17 without prejudice for the reasons explained in the Order. Dkt No. 4. That Order instructed
18 petitioner he could reopen the case by filing a First Amended Petition no later than
19 June 16, 2008, correcting the identified deficiencies in his original Petition. Petitioner now
20 applies to this court for a Certificate of Appealability, alluding to a nonexistent
21 February 25, 2008 Judgment in this case he mistakenly characterizes as "dismissing with
22 prejudice the petition for writ of habeas corpus." Dkt No. 6. The merits of his claims have
23 not been addressed in this court. The grounds for the Application are without merit, as the
24 dismissal was *without* prejudice and because he has been granted leave to amend his
petition and reopen this case. Accordingly, the Application is **DENIED**.

25 **IT IS SO ORDERED.**

26 DATED: May 6, 2008

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28 **HONORABLE LARRY ALAN BURNS**
United States District Judge